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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 JEFFERY W. MILINICH,)
9 Petitioner,) No. C 09-2612 CRB (PR)
10 vs.) ORDER GRANTING
11 CLIFF ALLENBY, Acting Director,) MOTION TO RE-OPEN AND
12 Respondent.) RE-INSTATING ORDER TO
13 SHOW CAUSE
14 (Docket #17)

15 Petitioner is civilly detained by the California Department of Hospitals
16 (CDH) as a sexually violent predator (SVP). He claims that the state law
17 governing civil commitments of SVPs violates various provisions of the federal
18 constitution. Per order filed on January 13, 2010, the court found that, liberally
19 construed, petitioner's claims appear cognizable in federal habeas under 28
20 U.S.C. § 2254 and ordered respondent to show cause why a writ of habeas corpus
21 should not be granted. Respondent filed an answer and petitioner filed a traverse.

22 Per order filed on December 29, 2010, the court recognized that, in People
23 v. McKee, 223 P.3d 566, 578-89 (Cal. 2010), the Supreme Court of California
24 effectively overruled the California Court of Appeal's denial of petitioner's equal
25 protection claim, and concluded that "the state courts must be given an
26 opportunity to reconsider petitioner's equal protection claim in light of McKee."
27 Docket #12 at 3. The court accordingly ordered as follows:

28 Petitioner shall file a habeas petition containing a McKee claim in
state court within ninety days after he receives this order. This
court will hold the present petition in abeyance pending the

1 completion of state-court consideration of petitioner's McKee
2 claim. The clerk shall administratively close this action. The
3 parties shall return to this court to reopen this action within ninety
4 days after state court consideration of petitioner's McKee claim is
5 concluded. Nothing further will take place in this matter until
6 then.

7 Id.

8 Petitioner moves to reopen this action on the ground that he has exhausted
9 state court remedies in connection with his McKee equal protection claim, i.e.,
10 that SVPs are similarly situated to, yet impermissibly treated more harshly than,
11 civil detainees who are categorized as mentally disordered offenders (MDOs) and
12 as not guilty by reason of insanity (NGIs). Petitioner shows that, on March 27,
13 2013, the Santa Clara County Superior Court denied his McKee equal protection
14 claim and that, on July 10, 2013, the Supreme Court of California also rejected
15 the claim. Good cause shown, petitioner's motion to reopen (docket #17) is
16 GRANTED and the stay in this matter is lifted.

17 In order to expedite this matter, respondent shall file with the court and
18 serve on petitioner, within 60 days of the issuance of this order, an amended
19 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254
20 Cases, showing cause why a writ of habeas corpus should not be granted.
21 Respondent shall file with the answer and serve on petitioner a copy of all
22 portions of the state trial record that have been transcribed previously and that are
23 relevant to a determination of the issues presented by the petition. Petitioner may
24 respond to the amended answer by filing an amended traverse with the court and
25 serving it on respondent within 30 days of his receipt of the amended answer.

26 SO ORDERED.

27 DATED: March 17, 2014

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CHARLES R. BREYER
United States District Judge